

In this issue:

- **COBRA Subsidies Program Extended**
- **ICE Ramps Up Audit Announcements**
- **GINA Now Effective in an Employment Context**
- **Are You Required to Have an Affirmative Action Program?**

COBRA Subsidies Program Extended Through March While Congress Mulls Longer Term Extensions

By: Thomas M. Winn, III

On March 2, 2010, President Obama signed into law a bill (H.R. 4691) that temporarily extends Consolidated Omnibus Budget Reconciliation Act (“COBRA”) health subsidies. The American Recovery and Reinvestment Act of 2009 (“ARRA”), as amended, previously provided for premium reductions for COBRA health benefits in connection with involuntary terminations occurring between September 1, 2008 and February 28, 2010. Eligible individuals pay only 35 percent of their COBRA premiums. The remaining 65 percent is reimbursed to the coverage provider via a

tax credit. The new law’s COBRA provisions extend the eligibility period for the 15-month 65 percent premium subsidy to those involuntarily terminated through the end of March 2010, and allows employees to receive the subsidy if they first lost group coverage due to a reduction in hours and later were terminated after enactment of the bill. The new law provides Congress with more time to determine whether to extend these benefits further. The Senate began debate March 3 on longer term extensions as part of a different bill (H.R. 4213).

ICE Ramps up Audit Announcements

By: Anthony H Mondiodis

On March 2, 2010, U.S. Immigration and Customs Enforcement (ICE) announced that 180 businesses in five states were notified of the intent by ICE to audit their respective hiring records (I-9s) to determine if they are in compliance with employment eligibility hiring laws and regulations. The five affected states are Alabama, Arkansas, Louisiana, Mississippi

and Tennessee. Businesses would be wise to interpret this announcement as indication that the Obama administration is serious about its intent to hold employers accountable for their hiring practices and ensuring a legal workforce and that fines and other sanctions are likely to be pursued.

Genetic Information Nondiscrimination Act (“GINA”) Now Effective In Employment Context

By: Thomas M. Winn, III

The Genetic Information Nondiscrimination Act (“GINA”) became effective in the employment context on November 21, 2009. As a result, employers must familiarize themselves with new responsibilities and restrictions provided for under GINA. Under Title II of GINA, it is illegal for employers to discriminate against employees or applicants because of genetic information. GINA prohibits the use of genetic information in making employment decisions, restricts acquisition of genetic information by employers and other entities, and strictly limits the disclosure of genetic information. The EEOC enforces Title II of GINA.

A. Definition of “Genetic Information”

Genetic information includes information about an individual’s genetic tests and the genetic tests of an individual’s family members, as well as information about any disease, disorder, or condition of an individual’s family members. Family medical history is included in the definition of genetic information because it is often used to determine whether someone has an increased risk of getting a disease, disorder, or condition in the future.

B. Discrimination, Harassment and Retaliation Prohibited

The law prohibits discrimination on the basis of genetic information with regard to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoffs, training, benefits, or any other term or condition of employment. It likewise is illegal to harass a person because of his or her genetic information. Prohibited harassment would include offensive or derogatory remarks about an applicant or employee’s genetic information, or about the genetic information of a relative. Moreover, it is illegal to retaliate against an applicant or employee for filing a charge of discrimination, participating in a discrimination proceeding, or otherwise opposing discrimination.

C. Rules Against Acquiring Genetic Information

It will usually be unlawful for an employer to get

genetic information. There are six narrow exceptions to this prohibition:

1. Inadvertent acquisitions of genetic information, such as “watercooler” situations where a supervisor overhears someone talking about a family member’s illness.
2. Acquisition as part of health or genetic services, including wellness programs, offered by the employer on a voluntary basis, if certain specific requirements are met.
3. Acquisition as part of the FMLA certification process, where an employee is asking for leave to care for a family member with a serious health condition.
4. Acquisition through commercially and publicly available documents like newspapers, as long as the employer is not searching those sources with the intent of finding genetic information.
5. Acquisition through a genetic monitoring program that monitors the biological effects of toxic substances in the workplace, where the monitoring is required by law or, under carefully defined conditions, where the program is voluntary.
6. Acquisition by employers who engage in DNA testing for law enforcement purposes as a forensic lab or for purposes of human remains identification as long as the genetic information is used for analysis of DNA markers for quality control to detect sample contamination.

D. Confidentiality of Genetic Information

It is also unlawful for an employer to disclose genetic information about applicants or employees. Employers must keep genetic information confidential and in a separate medical file. Genetic information may be kept in the same file as other medical information in compliance with the Americans with Disabilities Act. There are limited exceptions to this non-disclosure rule.

Are You Required to Have an Affirmative Action Program?

By: Elizabeth Hope Cothran

Do you have fifty (50) or more employees, and

- a federal supply and service contract of \$50,000 or more?
- Government bills of lading of \$50,000 or more?
- serve as a depository of Government funds?
- are a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes?
- are a financial institution covered by the FDIC for insurance coverage?
- submit annual Vets 100 or Vets 100A reports;
- comply with E-Verify;
- solicit applicant information; and more.

If you have questions about your company's federal contractor status, please feel free to contact Hope Cothran or any member of the Woods Rogers Labor & Employment Group. Utilizing the latest affirmative action compliance software, we can assist you in creating and maintaining compliant affirmative action programs and help guide you through the maze of federal contractor obligations.

If you answered yes to one (1) or more of the above, you may be required to:

- develop and maintain an annual affirmative action plan;
- submit annual EEO-1 reports;

The Office of Federal Contract Compliance Programs ("OFCCP") has recently increased compliance reviews and other enforcement methods. Don't wait for an audit to learn about your federal contractor obligations. Contact us today.

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